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TRANSFERRING THE FAMILY BUSINESS



A very significant proportion of Irish businesses are family owned and/or family run – thirty one of Ireland’s Top 50 private companies are family owned and our SME sector includes thousands of family run businesses.

Family businesses, as the term implies, tend to remain in family ownership. The issue of when the business should transfer to the next generation is always a vexed question – however, from a tax perspective now may be the time to act for two main reasons according to Jackie Masterson, Taxation Partner with Russell Brennan Keane.

“Firstly, we are all very much aware that the value of most businesses has fallen significantly in the current economic climate. Perhaps the only silver lining to that dark cloud is that the lower the value of the business the lower the associated tax cost on transferring the businesses to the next generation.

Secondly, with the Minister for Finance clearly signalling a clampdown on “unnecessary reliefs” in the next Budget there is a question mark as to whether certain reliefs which currently apply to reduce the tax cost on transferring family businesses will continue in their current form after next December’s Budget. Also the fact that Capital Gains Tax and Gift Tax have been increased from 20% to 22% and then to 25% in the last two successive budgets could signal an upward trend in capital based taxes” said Jackie.

There are three main taxes that can arise when a family business or company is gifted from a parent to a child. They are; Capital Gains Tax (CGT), Capital Acquisitions Tax (CAT) (i.e. gift tax) and Stamp Duty.

However, the current tax regime contains reliefs which can significantly reduce or eliminate altogether the tax costs arising on the transfer of a business to the next generation.

1. Capital Gains Tax is payable at a rate of 25% by a parent on the disposal of a family business. However, if the conditions for “Retirement Relief” are met, there is an exemption from this tax.
2. Gift Tax, (Capital Acquisitions Tax) is also payable at a rate of 25% by the child on the receipt of the gift. However, each child can receive €434k tax free from his / her parents in their lifetime. In addition, if the transaction qualifies for Business Property Relief, the maximum effective rate of tax can be reduced to 2.5% - the relief works by reducing the value of the business by 90% for the purposes of calculating the gift tax due. Combining these reliefs, if we take an example of a business worth €4m which fully qualifies for

Business Relief no gift tax would arise on the transfer to a child (assuming he/she had not received any previous gift or inheritance from his parents since 1 December 1991).

3. The rate of Stamp Duty due, depends on the type of asset being transferred.. If it is a transfer of shares, then the child is liable to Stamp Duty of 1% of the market value of the shares. If a business is being passed which is not held through a company, then some of the assets may be subject to Stamp Duty at a rate of up to 6% - however, this can be reduced to 3% as the transfer is between family members.

“Passing on a business is a significant life-time decision for an entrepreneur and they should review their own circumstances and objectives before doing so. They need to ensure their own retirement position is secure in terms of having enough money to live on. If cash has been built up in the business, the owner / manager will need to decide whether or not to extract some of that cash before they retire, either directly or via a pension” continued Jackie. Again, many of the reliefs that currently apply to enable a retiring shareholder to extract funds tax free on exiting the business may be abolished or restricted in next December’s Budget if they are regarded as “unnecessary reliefs”

Building a successful business takes a lot of hard work and sacrifice. The fact that the associated tax costs may be at an all time low should not drive the decision on whether now is the right time to pass on the business – it should be considered however in the context of an overall succession plan. Carefully planning the transition of the business is essential to ensure it continues as a successful business through the next generation of ownership.

Whether now is the right time to transfer the business will depend on the business itself and family circumstances – however, now is the time to start planning for it. In the context of the above tax reliefs, many of these are essential to ensure the continued survival of family businesses and hopefully will not be abolished or restricted. There are many conditions that need to be met to avail of the above reliefs some of which need to be satisfied up to 10 years in advance of a transfer, it is essential to talk to a qualified advice and to do so at an early stage of the process.

For further information or to discuss your specific requirements confidentially, please contact Jackie Masterson on (01) 6440100 or by email jmasterson@rbk.ie.

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About RBK

Russell Brennan Keane is one of Ireland's leading business advisory and accountancy firms. With 50 years experience providing professional advisory services to a range of clients in the mid to large corporate market in Ireland, from offices in Dublin, Athlone and Roscommon.

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